

ESTTA Tracking number: **ESTTA81009**

Filing date: **05/16/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Del Monte Corporation		
Entity	Corporation	Citizenship	Delaware
Address	One Market Street P.O. Box 193575 San Francisco, CA 94119-3575 UNITED STATES		

Attorney information	Chelseaa Larsen Heller Ehrman LLP 333 Bush Street San Francisco, CA 94104 UNITED STATES sf-trademark@hellerehrman.com, chelseaa.larsen@hellerehrman.com Phone:415-772-6000
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Applicant Information

Application No	78672503	Publication date	04/18/2006
Opposition Filing Date	05/16/2006	Opposition Period Ends	05/18/2006
Applicant	Marquardt, Naomi Charlotte Apt # 1 212 San Juan Avenue Venice, CA 90291 UNITED STATES		

Goods/Services Affected by Opposition

Class 044. All goods and sevicees in the class are opposed, namely: Pet sitting services

Attachments	Docum001.PDF (5 pages)(31272 bytes)
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Signature	/ChelseaaLarsen/
Name	Chelseaa Larsen
Date	05/16/2006

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 78/672,503

Published in the *Official Gazette* on April 18, 2006

Trademark: **K 9 LIVES “A NEW FRIEND FOR YOUR BEST FRIEND” & Design**

<p>Del Monte Corporation,</p>	
<p>Opposer</p>	
<p>v.</p>	
<p>Naomi Charlotte Marquardt,</p>	
<p>Applicant.</p>	

NOTICE OF OPPOSITION

Del Monte Corporation (“Opposer”), a Delaware Corporation having a principal place of business at One Market Street, P.O. Box 193575, San Francisco, California 94119-3575, believes it will be damaged by registration of the mark K 9 LIVES “A NEW FRIEND FOR YOUR BEST FRIEND” & Design shown in Serial No. 78/672,503 in International Class 44 and hereby opposes the same.

As grounds for opposition, Opposer alleges:

1. Naomi Charlotte Marquardt (“Applicant”), has filed an application to register the mark K 9 LIVES “A NEW FRIEND FOR YOUR BEST FRIEND” & Design for “pet sitting services” in International Class 44, as evidenced by the publication of such mark in the *Official Gazette* on April 18, 2006.

2. Applicant is, upon information and belief, an individual, having a place of business at 212 San Juan Avenue, Apartment #1, Venice, California 90291.

3. Opposer has, since at least as early as February 4, 1959, used the term 9-LIVES in connection with pet food. Opposer is the owner of federal registrations for 9-LIVES or for trademarks incorporating 9-LIVES or 9 LIVES, including United States Registration No. 688796 for 9-LIVES (Stylized) for “canned cat food,” United States Registration No. 2054643 for 9 LIVES PLUS CARE for “pet food,” United States Registration No. 2054655 for 9 LIVES PLUS for “pet food,” United States Registration No. 2520590 for 9-LIVES...EVERYTHING ELSE IS JUST CAT FOOD for “pet food,” and United States Registration No. 2710912 for 9 LIVES GOURMET MEALS for “cat food” (hereinafter collectively referred to as the “9 LIVES Marks”). Opposer is also the owner of United States Application No. 78/769763 for 9 LIVES DAILY ESSENTIALS for “pet food.”

4. There is no issue as to priority. Applicant has not used the mark K 9 LIVES “A NEW FRIEND FOR YOUR BEST FRIEND” & Design in connection with its services prior to July 18, 2005, as evidenced by Applicant’s Intent-to-Use application filed on July 18, 2005. The date of registration of Opposer’s 9 LIVES Marks is well before the filing date of Applicant’s K 9 LIVES “A NEW FRIEND FOR YOUR BEST FRIEND” & Design application.

5. Opposer has sold its goods under the 9 LIVES Marks throughout the United States and has developed exceedingly valuable goodwill with respect to the 9 LIVES Marks.

6. By virtue of its efforts and the expenditure of considerable sums for promotional and advertising activities and by virtue of the excellence of its goods, Opposer has gained for its 9 LIVES Marks a most valuable reputation and has created, in the minds of the buying public, an exclusive association between 9 LIVES and its goods.

7. The trademark proposed for registration by Applicant, namely, K 9 LIVES “A NEW FRIEND FOR YOUR BEST FRIEND” & Design, is likely to be confused with Opposer’s 9 LIVES Marks because the marks are similar in appearance, sound and overall commercial impression.

8. Applicant seeks to register K 9 LIVES “A NEW FRIEND FOR YOUR BEST FRIEND” & Design as a mark in connection with services that are substantially similar to the goods of Opposer and such use so nearly resembles Opposer’s use as to be likely to cause confusion, to cause mistake or to deceive within the meaning of 15 U.S.C. § 1052(d).

9. If Applicant is permitted to use and register the K 9 LIVES “A NEW FRIEND FOR YOUR BEST FRIEND” & Design mark for its services as specified in the opposed application, confusion in trade resulting in damage and injury to Opposer would be caused and would result by reason of the fact that Applicant’s mark is confusingly similar to Opposer’s marks. Persons familiar with Opposer’s 9 LIVES Marks would be

likely to buy Applicant's K 9 LIVES "A NEW FRIEND FOR YOUR BEST FRIEND" & Design services as services offered and sold by Opposer. Furthermore, any defect, objection, or fault found with Applicant's services marketed under its K 9 LIVES "A NEW FRIEND FOR YOUR BEST FRIEND" & Design mark would be likely to reflect upon and seriously injure the reputation that Opposer has established for its goods offered under its 9 LIVES Marks.

10. The 9 LIVES Marks are distinctive and famous throughout the United States, and have become closely associated with the goods of Opposer. The 9 LIVES Marks became famous prior to the filing of Applicant's intent-to-use application for K 9 LIVES "A NEW FRIEND FOR YOUR BEST FRIEND" & Design.

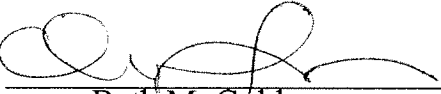
11. The trademark proposed for registration by Applicant, namely K 9 LIVES "A NEW FRIEND FOR YOUR BEST FRIEND" & Design, is likely to dilute and actually dilutes Opposer's 9 LIVES Marks and reduces the capacity of the famous 9 LIVES Marks to identify the goods of Opposer.

12. If Applicant is granted the registration herein opposed, such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that the opposition be sustained and that the application be refused for registration.

Respectfully submitted,
HELLER EHRMAN LLP

Dated: May 16, 2006

By: 
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Please refer to Our File No.: 19979-0009